



2015-005

STATE OF ALABAMA
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October 17, 2014

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Honorable W. Van Davis
Municipal Judge, City of Pell City
Davis & Tice Law Offices
423 23rd Street North
Pell City, Alabama 35125

Municipal Judges – Magistrates – Conflicts
of Interest – Marriages – Spouses – St.
Clair County

State law does not prohibit the spouse of a police captain from serving as a court clerk and magistrate for the municipal court. If appointed, the magistrate should recuse himself or herself in matters where the police-officer spouse is involved in the matter being presented to the magistrate.

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Is it lawful for the City of Pell City (“City”) to hire a municipal court clerk and magistrate whose spouse is a captain with the Pell City Police Department?

(2) Would the hiring of the spouse of a police officer within the same city create a conflict of interest in the spouse’s capacity as clerk and magistrate for the city court?

FACTS AND ANALYSIS

According to your request, the City is seeking to fill the vacant position of clerk and magistrate for the municipal court. A potential candidate for this position is the current spouse of a captain in the police department of the City. You essentially question whether it is permissible for the spouse of a police officer with the City to serve as a city court magistrate.

This Office has previously opined that there are no Alabama laws that specifically prohibit the appointment of the spouse of a police officer as the city magistrate. Opinion to Honorable Liles C. Burke, Municipal Judge, City of Arab, dated March 7, 2002, A.G. No. 2002-168; opinion to Honorable P. L. Woods, Mayor, City of Jasper, dated January 8, 1985, A.G. No. 85-00164. Those opinions also concluded that such appointments did not violate the state nepotism law. ALA. CODE § 41-1-5 (2013); *Burke* at 2; *Woods* at 1.

Those prior opinions, however, also cautioned that personnel rules of the various cities might prohibit such an appointment and that the cities there involved should review its respective personnel rules to make that determination. *Burke* at 2; *Woods* at 2. Additionally, the *Burke* opinion recognized that whether a magistrate has a conflict of interest in a particular situation necessarily depends on the facts of that individual case. *Burke* at 2.

Finally, magistrates are the chief officers of the municipal court administrative agency. ALA. CODE § 12-14-51 (2012). The Supreme Court prescribes the procedure for the appointment of magistrates. *Id.* Rule 18(II)(A) of the Rules of Judicial Administration provides that the position of magistrate is an office of public trust and that a magistrate is to be “neutral and detached from all law enforcement activities.” ALA. R. JUD. ADMIN. 18(II)(A). The comments to Rule 18 further elaborate as follows:

Magistrates are a part of the judicial branch of government and must exercise independent judgment in the performance of their duties; therefore, and in accordance with decisions of the United States Supreme Court, any person appointed as a magistrate must be neutral and detached from the law-enforcement function. ***No person affiliated with the prosecution or with a police organization or function, assigned to a police organization or function, or otherwise connected with law-enforcement activities should be considered eligible for appointment.***

Id. (commentary) (emphasis added).

The research of this Office has found no case wherein a magistrate has been found to lack neutrality and detachment by reason of a marriage to a police officer. Several cases, however, have emphasized that their holdings were based upon the fact that the police-officer spouse was not directly involved in the issue being magisterated. See the following cases:

U.S. v. McKeever, 906 F. 2d 129, 131 (5th Cir. 1990) (fact that magistrate was spouse of reserve deputy did not make magistrate an interested party where spouse was not present when warrant was issued and did not participate in warrant process);

Fortson v Davis, 2011 WL 5148662 (S.D. Ga. Oct. 6, 2011) (recusal not required where spouse of magistrate husband was not present at issuance of warrant, affidavit was prepared by another agency, and evidence in affidavit primarily involved other officers);

State ex rel. Brown v. Dietrick, 191 W. Va. 169 (W.Va. 1994) (recusal of magistrate spouse of police chief not required where spouse's name did not appear in affidavit, and there was no mention of police chief during application process).

CONCLUSION

State law does not prohibit the spouse of a police captain from serving as a court clerk and magistrate for the municipal court. If appointed, the magistrate should recuse himself or herself in matters where the police-officer spouse is involved in the matter being presented to the magistrate.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division